

Minutes of the Carlisle Board of Health
September 12, 2006
Approved: December 13, 2006

Present: Board members Martha Bedrosian (Chairman); Bill Risso; Michael Holland; Jeffrey Brem (arrived late); Leslie Cahill; Linda Fantasia (Agent); Rob Frado (TCG), and Laura Foley (Carlisle Mosquito)

The meeting was called to order at 7:30 p.m. at the town hall.

DAISY'S GASOLINE STATION CLEAN UP ACTIVITIES – Present for the discussion was Dan Deutsch, town counsel, and a number of abutters.

Bedrosian explained that the Board continues to be concerned about the former gas station site. The Daisys still own the property, but the market is now being leased to Carlisle Center Ventures LLC which operates "Ferns Country Store". The tenants have plans to expand the operation which will involve construction.

Last May the Board of Health tested six private wells in the center and the Daisys agreed to pay up to \$700 to test the onsite groundwater monitoring wells. Results were reviewed by Tony Mariano of the Water Quality Subcommittee. Levels of MTBE appear to be dropping, but the levels of benzene and toluene at the site continue to exceed drinking water standards. There has been no additional clean up activity at the site since the state's removal of contaminated soil and groundwater in 2000. In 2004, the state concluded that there is a continuing source of contamination but it could not easily be removed because it is under the building and in the roadway. Until the source is fully removed, further monitoring is unlikely to provide additional information.

Deutsch suggested the possibility of redevelopment as a brownfield. This could provide additional financial resources. There is also a state fund intended to help small gasoline station owners. The Board said the Daisy Family had applied for 21J funds in the past. Their financial ineligibility claim has not been fully resolved with the state. With the leasing of the property, the Board would expect an income stream.

Under the original Immediate Response Activity (IRA) the Daisys were required to pay for filtration systems for six private wells impacted with high levels of MTBE. For some of the wells tested in May, pre and post filter results were almost the same. There should be no break through if the systems are working properly. The Board asked counsel if there would be any liability if the town were to set up an operation and maintenance program for the six center wells and possibly pay for some or all of it. Alternatively, if the Board takes no action, is there potential liability? Bedrosian said she would be concerned that the town could be held responsible if it took over the maintenance and something went wrong, or someone became ill. Deutsch said that the town has a legal prerogative to take response action and if it makes sense pursue a financial recovery for costs incurred if they relate to the contamination problem at the site. Should the town pursue recovery costs, legal expenses would also be included. The Board would need to consider the possibility that its capital and legal investment may not be paid back.

Bedrosian said there is a small amount of funding available, but it was never intended to cover just the center contamination. Cahill asked whether the town could create a pool of money to help with the maintenance. Deutsch said that if the town performed specific response actions, then it could be reimbursed. If the town acted as a "fundraiser" it may not have standing. He suggested that the residents could apply pressure by filing their own claims to recoup costs. Risso said there was discussion at one point about including an additional fee for each new well installation. The money would be used to help offset clean up and monitoring. It was agreed that this could be problematic since the fee would apply to everyone but only benefit a few. Bedrosian asked whether the town could recover money already spent on testing. Deutsch said there is a \$25,000 fund to cover emergency response actions, but the Daisy site no longer falls into this category.

Deutsch said that since the wells are privately owned, the town is not required to do anything. The town does not provide water and does not have primary jurisdiction. The town could look into options for residents without taking on any liability. One option would be to produce an agreement with the property owners whereby the town facilitates activities but owners agree not to hold the town responsible for any losses. Holland felt the Board's duty should be to monitor the wells by regular, voluntary testing and provide this information to the well owners. There is no public duty on the Board's part. The wells are private property. Cahill asked whether the Board could pursue financial recovery from the Daisys now that there is an income stream. Risso did not see how the Board could do this. Private owners could, however. Deutsch said the town would have to do the clean up activities to be reimbursed.

Steve Hinton (WQS) urged the Board to test again. The Board agreed that it would be better to have at least two results, one in spring and one when the groundwater is lower. Sampling the monitoring wells, however, is a problem. Only four were tested in May. A fifth had surface runoff and the field technician did not have the proper equipment to pump it out. The Board agreed to look into another round of testing at the recommendation of the WQS.

Todd Arnow (11 East St) said he paid \$8000 to install a filtration system in 1997 even though DEP had told the Daisys to pay for it. He thinks the \$700 that Daisy offered is totally inadequate. The Board should be more proactive in getting the center tested. Holland said there are probably 12 wells on the site. Not all need to be tested. The UST's have been removed so the problem is not getting worse. If the state and the Daisys are not monitoring, the town should do it so residents will be informed. The critical element is MTBE which is a gasoline additive intended to burn fuel more efficiently. Its use became widespread in the 1990's. An unintended consequence, however, was its solubility. Once it gets into groundwater it spreads rapidly. MTBE has been the only constituent affecting private wells. The other hydrocarbons still exist on the site, but have not migrated off site. There is no question that the former gas station is the source of the pollution. If the site is contained and not getting worse, it may not make sense to do additional clean up activities since the remaining source is under a building.

Arnow asked whether further studies might show that the current guideline of 70 ppb is no longer a safe. Deutsch said that different levels of contamination call for different obligations. The Board agreed that continued monitoring is important. Deutsch said one benefit is that the state has not closed out the site. Any new permits or construction activity would trigger a review. The Board thanked counsel and the abutters for the discussion.

COVENTRY WOODS – Present for the discussion was David Freedman (Planning Board) and abutters Michael Epstein and Ken Hoffman. Steve Hinton (ZBA and WQS) also remained for the discussion. (Brem arrived).

Freedman reported on the ZBA meeting held the night before. The water supply continues to be a major issue. Dan Hill, special counsel to ZBA met with land use staff and board members and developed an issues matrix. The developer is in the process of revising the plans as a result of the matrix and following a DEP determination that the septic systems should be pressured dosed with groundwater mounding analyses. This was a recommendation from the Board of Health in a 6/19/06 memo. ZBA had asked the Board of Health to comment on a proposal known as the "Wisconsin Model" for the purpose of determining well impacts. The Board had reviewed the model but felt that it would not be useful since it did not deal with bedrock wells typical of Carlisle. The Board did not recommend using this model to interpret impacts. Freedman wanted to know how impacts should be determined.

Epstein summarized what has been happening with a proposed agreement between the abutters and the developer. A key issue is how the development may affect abutters' wells both in quantity and quality. The abutters had hired a professional consultant and so had the developer. The consultants have agreed on the testing protocol, but not how to interpret the results. There is no standard or criteria for what might be a "triggering" event. It may be necessary to have a third independent review if there is no agreement. The abutters would like the Board of Health to help define these criteria. Bedrosian suggested looking at other states or federal guidelines. This question must have come up before.

Holland said the Board had reviewed the well testing proposals and submitted comments to ZBA. He is confident that DEP will be able to decide on impacts. The Board of Health does not have the knowledge or expertise to provide criteria, whereas the state does. DEP will use best judgment when reviewing the test results. Hinton agreed that it would be inappropriate for the Board to try to create specific criteria. The state should decide. Freedman was concerned that every bedrock well is different so it may be impossible to quantify results. DEP is only requiring three abutters' wells to be tested, although the developer has agreed to test eight. If there is a problem in one of the other five wells, Freedman questioned what the state would do about it. Holland said the Beals and Thomas, the ZBA's peer reviewer, has already commented on the testing protocols developed by the consultants. It would be helpful if the abutters and applicant agreed, but if not they should leave the final decision to DEP. There is no need for the Board of Health to develop a standard which would then have to be applied to all developments.

Freedman was concerned that if there is no Memorandum of Understanding (MOU), the ZBA needs to include a condition in the permit on how to address results. There will be an escrow account of \$10,000 for each well (\$80,000) and \$35,000 for septic issues. The question of who will decide when these funds need to be expended should be spelled out. Epstein agreed, noting someone would have to decide on a new well, where to locate it, how deep to drill it. He is not looking for a criteria as much as a process. Hoffman said he would like to see an MOU but he does not know what to agree to. He would like help with defining this process. The Board agreed that there may be no easy answer. Problems will be dealt with as they arise. This is not uncommon in a development. The Board stands by its 6/19/06 recommendations to ZBA. The Board will review the revised plan when submitted.

Hinton was concerned about using only a single data point from one monitoring well to determine impacts from the septic system. One data point does not account for sampling variability. Hinton would prefer a more defensible criteria. Epstein said that blasting is the most significant risk to bedrock water quality. Holland said pre-post testing should cover this. Brem said that it would take time for effluent from the leaching area to reach an abutter's well. The purpose of the monitoring well is to identify a potential problem so that it can be remedied before affecting the water supply.

Hinton and the Board agreed that the most important role for the Board of Health is to make sure information is provided to all parties, not to develop a criteria for which it is not equipped. There will be a lot of data from eight wells which will be important for the abutters. Once the information is provided, it is up to the parties to work out issues. Freedman suggested the Board recommend locations of effluent monitoring wells and numbers. There was no further discussion.

MEDICAL RESERVE CORPS – Information meetings will be held on 10/11/06 at 7:30 pm and 10/18/06 at 10:00 am.

ADDITIONAL STAFF HOURS – the Board agreed to send a memo to the Personnel Board stating that since there has been no response to the Board's request submitted 12/15/05 and again on 6/20/06, the Board approves the additional (4.5) hours as of 9/12/06.

AED – Is still not in the lobby. The Board agreed to send a memo to the town administrator asking that this be done. The Board would also like to know who is checking the batteries.

69 AARON WAY – the Board agreed to have Frado look into the matter to determine whether the problem is being caused by a groundwater interceptor on the adjacent property.

BILLS – It was moved, seconded and unanimously voted to approve the bills for payment.

MINUTES – next meeting.

MEETING SCHEDULE – 10/26/06 (cancelled), 10/3/06, 10/24/06, 11/14/06, 12/12/06.

TOWN MEETING – 10/30/06.

There was no further business discussed. Meeting voted to adjourn at 10:50 pm

Respectfully submitted,

Linda Fantasia
Recorder